LEAVING THE SCENE OF AN ACCIDENT INVOLVING PROPERTY DAMAGE

G.L. c. 90, § 24(2)(a)

The defendant is charged with knowingly leaving the scene of an accident involving property damage. In order to prove the defendant guilty of this offense, the Commonwealth must prove five things beyond a reasonable doubt:

First: That the defendant operated a motor vehicle;

Second: That (he) (she) operated it (on a way) (or) (in a place where the public has a right of access) (or) (in a place where members of the public have access as invitees or licensees);

Third: That while the defendant was operating the vehicle, (he) (she) caused damage to another vehicle or property either by colliding with it or in some other way;

Fourth: That the defendant _knew_ (he) (she) (had collided with another's property) (or) (had in some way caused damage to another's property); and

Fifth: That after causing such damage, the defendant did not stop

and make known (his) (her) name, home address, and the registration

number of (his) (her) motor vehicle.

At this point, the jury must be instructed on the definitions of "Operation of a Motor Vehicle" (Instruction 3.200) and "Public Way" (Instruction 3.280).

SUPPLEMENTAL INSTRUCTIONS

1. *Purpose of statute.* **The purpose of this statute is to enable**

anyone whose person has been injured or property damaged by

a motor vehicle to obtain immediate and accurate information

about the person in charge of that motor vehicle. It imposes an

active and positive duty on the driver immediately to stop at the

scene and offer the specific information required by the statute,

in order to identify him or her and to make it simple to find him

or her later. The statute is not satisfied by stopping at some

remote place or by being passively willing to answer inquiries.

Commonwealth v. Horsfall, 213 Mass. 232, 236 (1913).

2. *To whom information must be given.*   **By plain implication, the statute requires that the specified information must be given to the person whose person or property has been injured, if reasonably possible, and if not, to someone acting in their interest or to some public officer or other person at or near the place at the time of the injury.**

Commonwealth v. Horsfall, 213 Mass. 232, 236 (1913).

3. *Extent of injury.*   **The extent of the damage or injury is not relevant except to the extent that it may be circumstantial evidence of whether or not the defendant knew that there had been a collision.**

NOTES:

1.   **Circumstantial evidence.** Circumstantial evidence may support an inference that the defendant did not make himself known, *Commonwealth v. LaVoie,* 9 Mass. App. Ct. 918, 918-19 (1980), or that the defendant was the operator, *Commonwealth v. Smith*, 368 Mass. 126, 128 (1975); *Commonwealth v. Rand*, 363 Mass. 554, 561-62 (1973); *Commonwealth v. Swartz*, 343 Mass. 709, 712 (1962); *Commonwealth v. Henry*, 338 Mass. 786 (1958). *But see Commonwealth v. Shea,* 324 Mass. 710, 712-14 (1949) (defendant not shown to be driver where unknown person had been driving vehicle three hours earlier, and no evidence that defendant operated vehicle on that date).

2.   **Collision.** "Collide" means to strike together. The statute applies whenever the defendant is in some way an actor, a partial cause in the collision, but not where the defendant is merely a passive participant (e.g., where a pedestrian falls or walks into the defendant's stopped vehicle). *Commonwealth v. Bleakney*, 278 Mass. 198, 201-02 (1932). An owner-passenger can be found guilty if he or she retained control over his chauffeur's operation of the vehicle. *Saltman, petitioner*, 289 Mass. 554, 561 (1935).

3.   **Constitutionality.** The statutory obligation does not violate the privilege against self-incrimination. *California v. Byers*, 402 U.S. 424 (1971); *Commonwealth v. Joyce*, 326 Mass. 751, 753-57 (1951).

4.   **Fault.** The statute applies whether or not the defendant was at fault, since the statute "focuses on causation, not fault." *Commonwealth v. Robbins*, 414 Mass. 444, 446-48 (1993).

5.   **Good faith mistake.** It is not a defense that the defendant believed that he or she was known to persons at the scene. *Commonwealth v. Joyce*, 326 Mass. 751, 752-53 (1951); *Commonwealth v. Lewis,* 286 Mass. 256 (1934). *Commonwealth v. Horsfall,* 213 Mass. 232, 237 (1913), held that the defendant's good faith belief that he had taken the necessary steps to make himself known was a defense, but the statute was subsequently amended and that defense is no longer available, *Commonwealth v. Coleman*, 252 Mass. 241, 243-44 (1925).

6.   **Not a continuing offense.** For purposes of the statute of limitations, the crime of leaving the scene of an accident is not a continuing offense. *Commonwealth v. Valchuis*, 40 Mass. App. Ct. 556, 561-62 (1996) (offense involving personal injury).

7.   **Causal Relationship.** The Commonwealth must prove that the accident caused property damage. *Commonwealth v. Velasquez*, 76 Mass. App. Ct. 697, 699-701 (2010).

8.   **Offering information without more violates statute.** A motorist must actually provide the required information. Merely offering to provide it is not sufficient to avoid liablity under G.L. c. 90, § 24(2)(a). It remains undecided whether an emergency or event such as road rage would excuse a motorist from compliance. *Commonwealth v. Martinez*, 87 Mass. App. Ct. 582, 585-86 & n.12, *rev. denied*, 473 Mass. 1101 (2015).

9.   **Unit of prosecution is incident-based.** The offense is defined by the act of leaving the scene of the accident, not by the number of people injured. *See Commonwealth* v. *Constantino*, 443 Mass. 521, 524-27 (2005); *see also Commonwealth* v. *Henderson*, 89 Mass. App. Ct. 205, 209-11 (2016) (leaving scene of multi-vehicle crash constitutes a single offense).

10.   **Only one penalty may be assessed.** "Only one penalty may be assessed . . . for a single act of leaving the scene . . . because 'the proscribed act is scene related, not victim related.'" *Commonwealth* v. *Henderson*, 89 Mass. App. Ct. 205, 210 (2016) (quoting *Commonwealth* v. *Constantino*, 443 Mass. 521, 524 (2005)).